IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.383 OF 2006

M/s Leo Advertising & Marketing).Appellant

Vs.

The Commissioner,
Kalyan-Dombivali Municipal Corpn. & Ors.).Respondents

Mr Puneet Chaturvedi i/by S.C.Chaturvedi for the Appellant.
Mr M.S.Kumthekar i/by A.S.Rao for the Respondent No.1.
Ms Rajmaxi Varma i/by Navdap Vora & Associates for the Respondent No.2.

CORAM : A.M. KHANWILKAR, J.

DATE : JUNE 20, 2006.

P.C.:

1. Heard Counsel for the parties. The order which is impugned in this Appeal From Order records that the Defendant No.1 has filed pursis Exhibit 44 that he does not intend to adduce oral evidence. In paragraph 3 of the order it is further noted that the Plaintiff also has not entered the witness box and he does not want to lead oral evidence on preliminary issue. It is possible that preliminary issue as framed was referable to provisions of Order 14 Rule 2 of the Code of Civil Procedure, 1908; which, however, can be decided only on demurer and not if the parties are required to lead evidence. Be that as it may, the

final order that has been passed by the Trial Court is of dismissing the suit as not maintainable against defendant No.1. The order passed by the Trail Court reads thus:

"

ORDER

1. The suit is not maintainable against the defendant No.1 and not survive against the rest of the defendants.

2. The plaintiff has filed another application for dispense with u/sec.80(2) of CPC u/sec.487 of the BPMC Act which are mandatory, it is not survived."

2. Counsel for the Respondent, therefore, submits that remedy of Appeal From Order is not available against this order. According to the Respondent No.6, order is referable to provisions of Order VII Rule 11 of the Code of Civil Procedure, 1908 of rejection of plaint. From the order it is not possible to discern that the same having been passed by the Trial Court

with reference to the power under order VII Rule 11 of the Code of Civil Procedure, 1908, as reference to such provision is not made.

3. Even so, I find that the order of the Trial Court is one of rejection of plaint in so far as the Defendant No.1, it is not amenable to Appeal From Order as is rightly contended by the counsel for the Respondent. The Appellant may have some other remedy but not Appeal From Order as it is filed in this court. Hence, this Appeal is disposed of with liberty to the Appellant to take recourse of appropriate remedy in accordance with law.

JUDGE